



UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
P.O. Box 1450
Alexandria, Virginia 22313-1450
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/535,529	05/09/2006	Samir F. Saba	UPITT-09379	7228
23535 7590 05/22/2008 MEDLEN & CARROLL, LLP 101 HOWARD STREET SUITE 350 SAN FRANCISCO, CA 94105			EXAMINER EVANSKO, GEORGE ROBERT	
			ART UNIT 3762	PAPER NUMBER
			MAIL DATE 05/22/2008	DELIVERY MODE PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/535,529

Applicant(s)

SABA, SAMIR F.

Examiner

George R. Evanisko

Art Unit

3762

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 16 November 2007.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 6-10, 27-35 is/are pending in the application.
- 4a) Of the above claim(s) 6-10 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 27-35 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-8508)
Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date _____
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____

DETAILED ACTION

Election/Restrictions

Applicant's election of group II in the reply filed on 11/16/07 is acknowledged. Because applicant did not distinctly and specifically point out the supposed errors in the restriction requirement, the election has been treated as an election without traverse (MPEP § 818.03(a)).

Claims 6-10 are withdrawn from further consideration pursuant to 37 CFR 1.142(b) as being drawn to a nonelected group, there being no allowable generic or linking claim. Election was made **without** traverse in the reply filed on 11/16/07.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

NOTE--The claims contain very broad limitations that can be met by MANY different patents. The claims as presently written only include a pacemaker ELEMENT, defibrillator ELEMENT, and leads/electrodes to detect electrical signals. The claims DO NOT contain any limitations to processing the detected signals to determine the earliest arriving signal, but contain only electrodes to detect the signals (i.e. all electrodes are configured to detect, or deliver, electrical signals since they are conductive elements). In addition, as set forth in the

specification on page 11, "leads" refers to "any electrical conductive material", i.e. an electrode. Finally, the use of "element" can mean anything, from a resistor used in the circuitry, to a telemetry coil used for processing pacing/defibrillation information, to a switch matrix, etc.

Claims 27-35 are rejected under 35 U.S.C. 102(b) as being anticipated by Warman et al (6091988). Warman discloses an implantable pacemaker, an implantable defibrillator element and a plurality of atrial and ventricular sensing/pacing/defibrillation leads/electrodes (e.g. Figures 1 and 2); configured to detect an earliest arriving electrical signal (e.g. column 8, lines 8-12. It is noted that the claim ONLY states that the signals are "detected" and not processed to determine the earliest arriving electrical signals. In addition, both leads will "detect" the earliest arriving electrical signal when in the detection configuration); and generates ATP burst (e.g. col. 8, lines 54-66). Warman also discusses the microprocessor and a storage memory (e.g. elements 224 and 226, col. 6, lines 16-39), a blanking period (e.g. figure 2); and quadripolar sensing leads/electrodes (e.g. elements 311, 320, 318, 310).

Claims 27-35 are rejected under 35 U.S.C. 102(e) as being anticipated by Burnes et al (2003/0204209). Burnes discloses an implantable pacemaker, an implantable defibrillator element and a plurality of atrial and ventricular sensing/pacing/defibrillation leads/electrodes (e.g. figures 1 and 2); configured to detect an earliest arriving electrical signal (e.g. para. 42, where it is the Examiner's position that because continuous detection is being performed , the earliest arriving electrical signal is automatically detected); initiate an ATP burst and detect an earliest arriving electrical signal (e.g. figures 3-5); the pacemaker generating the ATP since the ATP is comprised of pacing pulses and since the elements that define the pacemaker and

defibrillator have not been set forth in the claims; a microprocessor and storage memory (e.g. elements 224, 226, para. 30); a blanking period (e.g. figure 2); and quadripolar sensing leads/electrodes (e.g. 311, 320, 318, 310).

Response to Arguments

Applicant's arguments filed 11/16/07 have been fully considered but they are not persuasive. The affidavit has been considered. To clarify the previous Examiners rejection and remarks regarding ATP pulses, the ATP pulses are meant (inherently) to return the heart back to its normal rhythm. Although, normal rhythm does not always occur/result due to the ATP pulses or other pulses, such as defibrillation shocks, etc.

The arguments directed to detecting electrical signals after an ATP burst are not persuasive. The claims only have the leads/electrodes "detecting" the signals after the ATP burst and do not state that the signals are processed to determine the earliest signal. All electrodes are conductive and are meant to sense/detect electrical signals and therefore the electrodes of Warman and Burnes will detect the earliest electrical signal. The argument that the electrical signal of Warman is different than the electrical signal of the applicant is not persuasive since the examiner has interpreted the claim language of "electrical signal" in its broadest reasonable interpretation to mean any electrical signal. It is suggested that the applicant further define the electrical signal IN THE CLAIM if it is a different signal. The examiner has clarified the (mislabelled) location of ATP in Warman as being located, for example, in column 8 (although this is readily apparent upon reading the Warman reference). The arguments directed to Burnes are also not persuasive for similar reasons as discussed above. Finally, to repeat the above NOTE, the claims contain very broad limitations that can be met by MANY different patents.

The claims as presently written only include a pacemaker, defibrillator, and leads/electrodes to detect electrical signals. The claims **DO NOT** contain any limitations to processing the detected signals to determine the earliest arriving signal, and only include electrodes to detect the signals (i.e. all electrodes are configured to detect, or deliver, electrical signals since they are conductive elements). In addition, as set forth in the specification on page 11, “leads” refers to “any electrical conductive material”, i.e. an electrode. Finally, the use of “element” can mean anything, from a resistor used in the circuitry, to a telemetry coil used for processing pacing/defibrillation information, to a switch matrix, etc.

Conclusion

THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to George R. Evanisko whose telephone number is 571 272 4945. The examiner can normally be reached on M-F 6:30-5:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Angela Sykes can be reached on 571 272 4955. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/George R Evanisko/
Primary Examiner, Art Unit 3762

GRE
5/16/08